


# **EXHIBIT “B”**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Mark F. McKenna, Esquire McKenna &amp; Associates, P.C. 436 Boulevard of the Allies Suite 500 Pittsburgh, PA 15219</p>  <p>9590 9402 3947 8060 6816 59</p> <p>2. Article Number (Transfer from service label)</p> <p>7016 3010 0001 0443 1319</p>		<p>A. Signature</p> <p><b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>Mark F. McKenna</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Mail Restricted Delivery (D)</p>		<p>Domestic Return Receipt</p>	

7/7/22, 12:25 PM

USPS.com® - USPS Tracking® Results

USPS Tracking®

FAQs >

Track Another Package +

Tracking Number: 70163010000104431319

Remove X

Your item was delivered to the front desk, reception area, or mail room at 2:43 pm on July 5, 2022 in PITTSBURGH, PA 15219.

USPS Tracking Plus® Available ▾

✓ **Delivered, Front Desk/Reception/Mail Room**

July 5, 2022 at 2:43 pm  
PITTSBURGH, PA 15219

Feedback

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Text & Email Updates



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Tracking History



July 5, 2022, 2:43 pm  
Delivered, Front Desk/Reception/Mail Room  
PITTSBURGH, PA 15219  
Your item was delivered to the front desk, reception area, or mail room at 2:43 pm on July 5, 2022 in PITTSBURGH, PA 15219.

July 2, 2022, 11:05 am  
No Access to Delivery Location  
PITTSBURGH, PA 15219

7/7/22, 12:25 PM

USPS.com® - USPS Tracking® Results

July 2, 2022, 8:03 am  
Out for Delivery  
PITTSBURGH, PA 15212

July 2, 2022, 7:52 am  
Arrived at Post Office  
PITTSBURGH, PA 15212

July 2, 2022, 12:54 am  
Departed USPS Regional Facility  
PITTSBURGH PA DISTRIBUTION CENTER

July 1, 2022, 7:01 pm  
Arrived at USPS Regional Facility  
PITTSBURGH PA DISTRIBUTION CENTER

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**FAQs**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Affidavit of Service of Rule to File Complaint** has been served by first-class U.S. Mail and electronic mail this 11<sup>th</sup> day of July, 2022, to the following counsel of record:

Mark F. McKenna, Esquire  
McKenna & Associates, P.C.  
436 Boulevard of the Allies  
Suite 500  
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By:   
\_\_\_\_\_  
Scott D. Clements, Esquire

Counsel for Defendant,  
Wheeling & Lake Erie Railway Company

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

HEIDI A. CHARLES, individually and  
as an Administrator of the Estate of J.G.,  
deceased, and A.G., a minor, by and  
through HEIDI A. CHARLES, as a  
parent and natural guardian of a minor,

Plaintiffs,

vs.

WHEELING & LAKE ERIE  
RAILWAY COMPANY, a Delaware  
corporation,

Defendant.

CIVIL DIVISION

NO. GD-22-007056

TYPE OF PLEADING:  
**COMPLAINT IN CIVIL ACTION**

FILED ON BHEALF OF:  
**PLAINTIFFS, HEIDI A. CHARLES,**  
**individually and as an Administrator of**  
**the Estate of J.G., deceased, and A.G., a**  
**minor, by and through HEIDI A.**  
**CHARLES, as a parent and natural**  
**guardian of a minor**

COUNSEL OF RECORD FOR THIS  
PARTY:

MARK F. McKENNA, ESQUIRE  
PA I.D. No. 30297

**McKENNA & ASSOCIATES, P.C.**

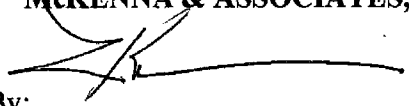
436 Boulevard of the Allies  
Suite 500  
Pittsburgh, PA 15219  
Phone (412) 471-6226  
Fax (412) 471-6658

[mfm@mckennaandassociates.com](mailto:mfm@mckennaandassociates.com)

**TO: DEFENDANT**

You are hereby notified to file a written  
response to the within Complaint in  
Civil Action within Twenty (20) days of  
service hereof or judgment may be  
entered against you.

**McKENNA & ASSOCIATES, P.C.**

By:   
Mark F. McKenna, Esquire  
*Attorneys for Plaintiff*

**JURY TRIAL DEMANDED**



**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

HEIDI A. CHARLES, individually and  
as an Administrator of the Estate of J.G.,  
deceased, and A.G., a minor, by and  
through HEIDI A. CHARLES, as a  
parent and natural guardian of a minor,

CIVIL DIVISION

NO. GD-22-007056

Plaintiffs,

vs.

WHEELING & LAKE ERIE  
RAILWAY COMPANY, a Delaware  
corporation,

Defendant.

**COMPLAINT IN CIVIL ACTION**

Plaintiffs, Heidi A. Charles, in her own right and as the Administrator of the Estate of J.G., Deceased, and Plaintiff, A.G., a minor, by and through Heidi A. Charles, as parent and natural guardian of said minor, by and through their attorneys, McKENNA & ASSOCIATES, P.C., file this Complaint in Civil Action against the Defendant, Wheeling & Lake Erie Railway Company, upon causes of action of which the following is a statement:

1. Plaintiff, Heidi A. Charles (hereinafter referred to as "Plaintiff Mother"), an adult individual and the surviving parent of Decedent, J.G. (hereinafter referred to as "Decedent"), who resides at 154 Morgan Hollow Road, South Fayette Township, Allegheny County, PA 15064.



2. A.G. is a minor and a surviving sibling of Decedent, J.G. (hereinafter referred to as "Plaintiff A.G."), who resides at 154 Morgan Hollow Road, South Fayette Township, Allegheny County, PA 15064.

3. Plaintiff Mother and Plaintiff A.G. are sometimes hereinafter referred to collectively as "Plaintiffs".

4. Decedent was born on [REDACTED], 2005 and was 15 years old at the time of her death.

5. Decedent died intestate on June 24, 2020.

6. On April 26, 2022, Letters of Administration were granted to Plaintiff Mother by the Register of Wills of Allegheny County, Pennsylvania at No. 022003721.

7. Plaintiff Mother brings causes of action set forth herein under and by virtue of 42 Pa. C.S.A. §8301, known as the Wrongful Death Act of the Commonwealth of Pennsylvania, and 42 Pa. C.S.A. §8302, known as the Pennsylvania Survival Statute.

8. Plaintiff A.G. brings a cause of action as set forth herein for negligent infliction of emotional distress.

9. Defendant, Wheeling & Lake Erie Railway Company (hereinafter referred to as "Defendant"), is a Delaware corporation with its principal place of business located at 100 First Street SE, Brewster, OH 44613.

10. At all times relevant hereto, Defendant was authorized to conduct and transact business within the Commonwealth of Pennsylvania, and more particularly Allegheny County, Pennsylvania.

11. At all times relevant hereto, Defendant regularly and routinely engaged in commerce in the Commonwealth of Pennsylvania, and more particularly Allegheny County, Pennsylvania.

12. At all times relevant hereto, Defendant was an interstate carrier by rail and owned, maintained, and operated the railroad, including railroad tracks and bridges, located in Morgan, South Fayette Township, Allegheny County, Pennsylvania.

13. At all times relevant hereto, Defendant knew or in the exercise of reasonable care should have known that the railroad bridge that runs over Wabash Avenue, in a populated area of Morgan, South Fayette Township, Pennsylvania (hereinafter referred to as “the Railroad Bridge”), was regularly utilized by children and teenagers who were known by Defendant or who should have been known by Defendant to routinely enter onto and crossover said Railroad Bridge and the adjacent railroad tracks.

14. At all times relevant hereto, Defendant knew or in the exercise of reasonable care should have known that the Railroad Bridge and/or adjacent tracks were located in an area where children and teenagers were routinely observed to be present.

15. At all times relevant hereto, Defendant knew or in the exercise of reasonable care should have known that the Railroad Bridge presented an unreasonable risk of death or serious bodily injury to children and teenagers routinely utilizing the Railroad Bridge and/or adjacent railroad tracks.

16. Decedent, because of her youth, did not realize and/or fully appreciate the risks associated with walking along the Railroad Bridge and/or the adjacent railroad tracks, specifically the potential for a train to suddenly and without advanced notice or warning come upon those walking along the Railroad Bridge and/or adjacent railroad tracks.

17. Decedent, because of her youth, did not realize and/or fully appreciate that once she was on the Railroad Bridge she had no means of safely avoiding any train which suddenly and without advanced notice or warning entered onto the Railroad Bridge.

18. Defendant did realize and appreciate or should have realized and appreciated the risk posed to children and teenagers, including Decedent, by its trains entering onto the Railroad Bridge when said children and teenagers were situated on the Railroad Bridge.

19. Despite said realization and appreciation, Defendant failed to exercise reasonable care to prevent children and teenagers who routinely entered onto and crossed over its tracks from traversing the railroad tracks and entering onto the Railroad Bridge.

20. At no point in time prior to the accident resulting in Decedent's death did Defendant take any steps to prevent the public, specifically children and teenagers, including Decedent, from entering onto and/or crossing the Railroad Bridge.

21. At no point in time prior to the accident resulting in Decedent's death did Defendant post any warnings to alert the public, specifically children and teenagers, including Decedent, of the risk of suddenly appearing trains.

22. At no point in time prior to the accident resulting in Decedent's death did Defendant post any warnings to alert the public, specifically children and teenagers, that the configuration of the Railroad Bridge resulted in their being no means of safely avoiding a train traversing the Railroad Bridge.

23. On or about June 24, 2020, at approximately 11:14 a.m., Decedent, Plaintiff A.G. and a group of teenagers were walking along the railroad tracks adjacent to the Railroad Bridge.

24. At said date and time, Decedent and two other teenagers from the group proceeded along the railroad tracks and onto the Railroad Bridge.

25. At said date and time, Plaintiff A.G. and the remaining teenagers from the group broke away and walked along a route that took them under the Railroad Bridge.

26. At the time Decedent entered onto the Railroad Bridge, she was unaware that a train was approaching.

27. Due to the configuration of the Railroad Bridge, once Decedent was on it, there was nowhere for her to safely move to avoid being struck by Defendant's suddenly appearing and unexpected train.

28. Defendant was aware of this configuration of the Railroad Bridge and the risk it posed to children and teenagers confronted with a suddenly appearing and unexpected train.

29. While walking across the Railroad Bridge, Decedent was violently and without warning struck by Defendant's train, at which time she was thrown off the Railroad Bridge onto the pavement below.

30. At the time Decedent was thrown off the Railroad Bridge and onto the pavement below, Plaintiff A.G. was walking along the same pavement and witnessed her sister's fall and subsequent death.

31. At no point in time relevant hereto did Defendant's train sound its horn prior to entering onto the Railroad Bridge.

32. At no point in time relevant hereto did Defendant's train reduce its speed prior entering the Railroad Bridge.

33. At no point in time relevant hereto did Defendant, by and through its agents, servants and/or employees, take any other precautionary steps to alert children or teenagers, the presence of whom was frequent and routine and to be anticipated by Defendant, of the imminent approach of Defendant's train on the Railroad Bridge.

34. At all times relevant hereto, Defendant was aware that the area where Decedent was struck and killed was regularly entered and/or crossed by children and teenagers.

35. As a direct and proximate result of the negligent and/or careless conduct of Defendant, by and through its agents, servants, and/or employees, as set forth more fully within this Complaint, Decedent suffered injuries which resulted in her death on June 24, 2020.

36. Decedent's injuries and death were a direct and proximate result of the negligence and carelessness of Defendant, by and through its agents, servants, and/or employees acting within the scope of their agency, servancy or employment as more fully set forth within this Complaint.

**COUNT I**  
**WRONGFUL DEATH**

*Heidi A. Charles, individually and as Administrator of the Estate of J.G., Deceased vs.  
Wheeling & Lake Erie Railway Company*

37. Plaintiffs incorporates by reference hereto Paragraphs 1 through 36, inclusive, as if the same were set forth more fully herein at length.

38. As a result of Defendant's negligence and carelessness, by and through its agents, servants, and/or employees, as set forth within this Complaint, which was the direct and proximate result of death of Decedent, Plaintiff Mother brings causes of action as set forth herein under and by virtue of 42 Pa.C.S.A. §8301, known as the Wrongful Death Act of the Commonwealth of Pennsylvania, for all persons entitled to recover damages.

39. The following individuals are the survivors of Decedent and are entitled by law to recover damages for her wrongful death:

- a. Joseph Gennaro, father of Decedent, who resides at 2100 Ritchie Street, Aliquippa, PA 15001; and
- b. Heidi A. Charles, mother of Decedent, who resides at 154 Morgan Hollow Road, South Fayette Township, PA 15064.

40. Pursuant to Rule 2205 of the Pennsylvania Rules of Civil Procedure, notice has been given to the persons named in the aforementioned Paragraph that an action has been initiated for the wrongful death of Decedent.

41. Decedent did not initiate any action during her lifetime for those injuries she sustained on June 24, 2020.

42. Under the Wrongful Death Statute, Plaintiff Mother is entitled by law to recover, on behalf of those individuals identified in Paragraph 39, the following damages:

- a. Loss of Decedent's personal services, society, companionship, support, consortium, comfort, guidance, solace, and protection;
- b. Loss of Decedent's contributions from the date of her death through the remainder of her life expectancy;
- c. Funeral, burial and administrative expenses; and
- d. Other losses and/or damages permitted by law.

**WHEREFORE**, Plaintiff, Heidi A. Charles, individually and as Administrator of the Estate of J.G., demands judgment against Defendant, Wheeling & Lake Erie Railroad Company, for compensatory damages in an amount in excess of the arbitration limits of Allegheny County, Pennsylvania, together with interest and costs of suit.

**COUNT II**  
**SURVIVAL ACTION**

*Heidi A. Charles, individually and as Administrator of the Estate of J.G., Deceased vs.  
Wheeling & Lake Erie Railway Company*

43. Plaintiffs incorporate by reference hereto, the allegations set forth in Paragraphs 1 through 42, inclusive, as though fully set forth herein at length.

44. This action is brought to recover damages for the death of Decedent.

45. Decedent's Administrator, Plaintiff Mother, is the proper party to bring this action under 42 Pa C.S.A. § 8302.

46. As a result of Defendant's negligence and carelessness, by and through its agents, servants, and/or employees, as set forth more fully within this Complaint, which acts were the direct and proximate cause of Decedent's death, Plaintiff Mother is entitled by law to recover, on behalf of those individuals identified in Paragraph 39, the following damages:

- a. Decedent's pain and suffering;
- b. Decedent's loss of earning power and/or potential earning capacity;
- c. Loss of future earnings for the period of Decedent's life expectancy; and
- d. Other damages permitted by law.

**WHEREFORE**, Plaintiff, Heidi A. Charles, individually and as Administrator of the Estate of J.G., demands judgment against Defendant, Wheeling & Lake Erie Railroad Company, for compensatory damages in an amount in excess of the arbitration limits of Allegheny County, Pennsylvania, together with interest and costs of suit.

**COUNT III**  
**NEGLIGENCE**

*Heidi A. Charles, individually and as Administrator of the Estate of J.G., Deceased, and Heidi A. Charles vs. Wheeling & Lake Erie Railway Company*

47. Plaintiffs incorporate by reference hereto, the allegations set forth in Paragraphs 1 through 46, inclusive, as though fully set forth herein at length.

48. At all times aforesaid, the negligent and/or careless conduct of Defendant consisted of the acts and/or omissions of its agents, servants, and/or employees, acting within the scope of their agency, servancy and/or employment as set forth within this Complaint, for which Defendant is vicariously liable.



49. At all times relevant hereto, Defendant was responsible and liable for the negligent and/or careless conduct of its agents, servants, and/or employees, acting within the scope of their agency, servancy, and/or employment as set forth within this Complaint, pursuant to the doctrine of *respondeat superior*.

50. At all times aforesaid, the careless and negligent conduct of Defendant, by and through its agents, servants, and/or employees, was the legal and proximate cause of the death of Decedent on June 24, 2020, in the following particulars:

- a. By failing to properly instruct the operator(s) of its train as to the proper manner in which to approach the Railroad Bridge;
- b. By permitting the public to enter and/or cross its tracks without objection at the point where Decedent was struck and killed;
- c. By failing to take any steps to prevent children, particularly Decedent, from entering onto and crossing over the Railroad Bridge;
- d. By failing to implement a protocol to safely approach a bridge such as the Railroad Bridge so as to ensure any known or anticipated children and teenager pedestrians were provided notice of the pending approach of a train;
- e. By failing to activate the train's horn so as to provide adequate advanced notice of the train's approach so as to enable known or anticipated children and teenager pedestrians to take the necessary steps to move safely off of said Railroad Bridge;
- f. By failing to warn known or anticipated children and teenager pedestrians of the potential for trains to appear suddenly and without warning;

- g. By failing to warn known or anticipated children and teenager pedestrians of the hazards associated with walking across the Railroad Bridge, including the risk of being struck by a train due to the lack of a means to safely move out of the train's way;
- h. By failing to ensure its agents, servants and/or employees were trained to keep a lookout to see if the tracks were clear when approaching an area where know children and teenage pedestrians frequented; and
- i. By failing to ensure its agents, servants and/or employees were trained to moderate their speed as they approached the Railroad Bridge, an area where know children and teenage pedestrians frequented.

51. As a direct and proximate result of Defendant's aforementioned negligent and/or careless conduct, by and through its agents, servants, and/or employees, as set forth within this Complaint, Decedent sustained the following injuries:

- a. Blunt impact injuries to the head and torso; and
- b. Death.

**WHEREFORE**, Plaintiff, Heidi A. Charles, individually and as Administrator of the Estate of J.G., demands judgment against Defendant, Wheeling & Lake Erie Railroad Company, for compensatory damages in an amount in excess of the arbitration limits of Allegheny County, Pennsylvania, together with interest and costs of suit.

**COUNT IV**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

*A.G. a minor, by and through Plaintiff, Heidi A. Charles, as a parent and natural guardian of a minor vs. Wheeling & Lake Erie Railway Company*

52. Plaintiffs incorporate by reference hereto, the allegations set forth in Paragraphs 1 through 51, inclusive, as though fully set forth herein at length.

53. Plaintiff A.G., sister of Decedent, was walking on the pavement below the Railroad Bridge and witnessed Decedent being struck, thrown from the Railroad Bridge and being killed by Defendant's train.

54. Plaintiff A.G. had a contemporaneous perception of tortious injury to Decedent, a close relative.

55. Defendant's conduct, as described within this Complaint, constitutes negligence.

56. As a direct and proximate result of Defendant's negligence, as described within this Complaint, Plaintiff A.G. suffered an immediate and substantial physical harm.

57. As a direct and proximate result of Defendant's negligence, as described within this Complaint, Plaintiff A.G. suffered freight and mental suffering traceable to Defendant's negligence.

58. As a direct and proximate result of Defendant's negligence, as described within this Complaint, Plaintiff A.G. is entitled to seek recovery for those damages and injuries she suffered.

WHEREFORE, Plaintiff, A.G., a minor, by and through Plaintiff, Heidi A. Charles, as a parent and natural guardian of a minor, demands judgment against Defendant, Wheeling & Lake Erie Railroad Company, for compensatory damages in an amount in excess of the arbitration limits of Allegheny County, Pennsylvania, together with interest and costs of suit.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,

**McKENNA & ASSOCIATES, P.C.**

BY: 

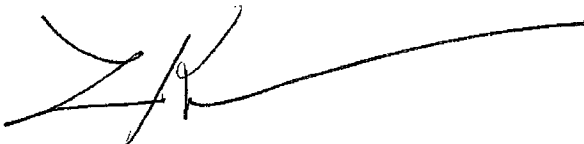
MARK F. McKENNA, ESQUIRE  
*Attorneys for Plaintiffs, HEIDI A. CHARLES,  
individually and as an Administrator of the Estate of  
J.G., deceased, and A.G., a minor, by and through  
HEIDI A. CHARLES, as a parent and natural guardian  
of a minor*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Complaint in Civil Action was forward via electronic mail and U.S. mail, postage prepaid, to the following this 5<sup>th</sup> day of August, 2022:

J. Lawson Johnston, Esquire  
Scott D. Clements, Esquire  
DICKIE, McCAMEY & CHILCOTE, P.C.  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402

**McKENNA & ASSOCIATES, P.C.**

BY:   
\_\_\_\_\_  
MARK F. McKENNA, ESQUIRE  
*Attorneys for Plaintiffs*

**VERIFICATION**

I, Heidi A. Charles, on behalf of A.G., a minor, depose and say subject to the Penalties of 18 Pa. C.S., Section 4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information and belief. However, certain of the language is that of counsel and, to the extent that it goes beyond the factual information that I have provided to counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties relating to unsworn falsification to authorities.

Date

8/4/22

Heidi A. Charles, on behalf of A.G., a minor

Heidi Charles

**VERIFICATION**

I, Heidi A. Charles, in my own right and as the Administrator of the Estate of J.G., Deceased, depose and say subject to the Penalties of 18 Pa. C.S., Section 4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information and belief. However, certain of the language is that of counsel and, to the extent that it goes beyond the factual information that I have provided to counsel, I have relied upon counsel in making this verification.

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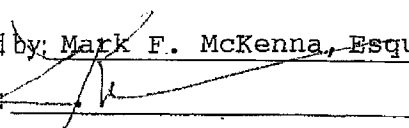
8/4/22  
Date

Heidi Charles  
Heidi A. Charles, in her own right and as the  
Administrator of the Estate of J.G., Deceased

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Mark F. McKenna, Esquire

Signature: 

Name: Mark F. McKenna

Attorney No. (if applicable): 30297